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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/11  
 SPONSOR Payne LAST UPDATED 02/28/11 HB \_\_\_\_\_  
 SHORT TITLE Update Uniform Acts Relating To Property SB 146/aSJC  
 ANALYST Haug

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	\$5.0	NFI	\$5.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 General Services Department (GSD)  
 Attorney General (AGO)  
 Children, Youth and Families Department (CYFD)  
 Administrative Office of the District Attorneys (AODA)  
 Developmental Disabilities Planning Council (DDPC)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment removes changes to the Uniform Power of Attorney Act which would have extended a durable power of attorney beyond the death of the principal in certain circumstances; revises the limit from \$5 thousand dollars to \$10 thousand dollars for a person under a duty to pay or deliver property to another on behalf of minor; revises the period in which certain future interests must vest from 60 years to 30 years and makes numerous clarifying or correcting changes.

#### Synopsis of Original Bill

Senate Bill 146, introduced on behalf of the Courts, Corrections and Justice Committee, makes changes to several uniform acts, including the Uniform Probate Code, Uniform Trust Code, Uniform Principal and Income Act, Uniform Adult Guardianship and Protection Proceedings Jurisdiction Act and Uniform Power of Attorney Act. The effective date is January 1, 2012. A detailed summary of the bill is included in the attachment to this FIR.

## FISCAL IMPLICATIONS

The AOC notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Based on the AOC's statement that minimal administrative cost is estimated at \$5 thousand dollars in the table above.

## SIGNIFICANT ISSUES

According to the CYFD, The primary issue within this bill concerning CYFD is that it bars a parent from inheriting property through a child if that parent's parental rights were terminated and the parent-child relationship was not judicially re-established. For the purposes of intestate succession, the parent whose parental rights were terminated are treated in the same manner as though the parent predeceased the child. CYFD is the agency through which the State of New Mexico, in appropriate circumstances, seeks to terminate parental rights.

The DDPC comments with respect only to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) aspects of SB 146.

The Uniform Law Commission (ULC) approved the UAGPPJA to clarify jurisdiction and provide a procedural roadmap for addressing multi-state dilemmas. If enacted by Tribal courts, this will also clarify such jurisdictions.

This Bill is designed to clarify jurisdiction and provide a procedural roadmap for addressing multi-state dilemmas with specific guidelines for:

1. which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult.
  - primary jurisdiction is the "home state" - state the adult has lived at least 6 consecutive months.
  - next is the "significant-connection state" - broadly defined to include the where the person's family is, a state where the individual might have lived for many years, or the state where the individual's property is located.
  - Once a court has jurisdiction, this continues until the proceeding is terminated or transferred.

Contested cases in which courts in more than one state have jurisdiction are becoming more common.

- cases arise when the adult is physically located in a state other than their domicile.
  - others arise from uncertainty as to their domicile (owns a vacation home elsewhere).
2. transfer of guardianship and conservatorship to other states, and acceptance of guardianships and conservatorships from other states, and
  3. registration of orders from other jurisdictions.

Currently, in most states, all of the procedures for an original appointment must be repeated - a time consuming and expensive prospect. If also adopted as Tribal Codes, the UAGPPJA will also facilitate recognition of guardianship Court Orders by State and Tribal Courts.

**RELATIONSHIP**

Senate Bill 146 is related to House Bill 271 which continues certain guardianship powers after the death of a protected person.

**TECHNICAL ISSUES**

The AOC notes Section 45-2-103 may contain a vague definition subject to dispute. The term "deceased spouse" is defined as an individual to whom the decedent was married at the individual's death, and does not include a spouse who was divorced from, or "treated as divorced from," the decedent at the time of the decedent's death. The term "treated as divorced from" appears to be vague unless otherwise more specifically defined by statute or caselaw.

GH/svb:bym

## **Detailed Summary of Senate Bill 146**

Senate Bill 146 amends provisions of the Uniform Probate Code (UPC), Section 45-1-101 NMSA 1978 et. seq., the Uniform Trust Code (UTC), Section 46A-1-101 NMSA 1978 et. seq. and the Uniform Principal and Income Act (UPIA), Section 46-3A-101 NMSA 1978 et. seq., and enacts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Sections 45-5A-101 through 45-5-502 NMSA 1978. Additionally, the bill amends and recompiles the Uniform Disclaimer of Property Interests Act (UDPIA), Section 46-10-1 NMSA 1978 et. seq.

### **I. UPC**

SB 146 makes technical and updating changes in definitional sections and throughout the UPC and amends Section 45-1-301 NMSA 1978 to expand the application of the code to the disclaimer of property interests by persons in NM, certain kinds of trusts and other governing instruments that are governed by the laws of NM, and the apportionment of taxes on estates subject to tax by NM. The amendment also adds Subsection (B) that clearly distinguishes the UPC from other NM laws, providing that the UPC does not create, enlarge, modify or diminish parental rights or duties pursuant to the New Mexico Uniform Parentage Act, the Children's Code, and the terms and definitions of the UPC shall not be used to define or interpret terms of those acts, the Adoption Act or other NM laws.

The UPC is also amended in Section 45-1-302 NMSA 1978, to expand the subject matter jurisdiction of the district court to include survivorship and related accounts and similar property interests, disclaimer of interests in property, apportionment of taxes on estates and, in addition to trusts, other governing instruments except wills.

The bill amends Section 45-1-403 to provide that in judicial proceedings involving trusts, or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, an order binding the sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default or otherwise are subject to the power. If no conservator or guardian has been appointed, a parent may represent a minor child. The bill makes technical changes in Section 45-2-103 with respect to shares of heirs other than a surviving spouse relating to grandparents and relatives of deceased spouses, and also provides that the term "deceased spouse" means an individual to whom the decedent was married at the individual's death, and does not include a spouse who was divorced from, or treated as divorced from, the decedent at the time of the decedent's death." Section 45-2-104 is amended to further define rules of survival by 120 hours after birth an individual in gestation at a decedent's death for purposes of intestate succession, but also provides that this section does not apply if its application would cause the estate to pass to the state under Section 45-2-105 NMSA 1978. SB 146 amends Section 45-2-114 to bar a parent from inheriting from a child in circumstances involving termination of parental rights.

SB 146 enacts new Sections 45-2-115 through -122 to define terms, inheritance rights and rules relating to adoption, divorce, genetic parents, relatives, effect of parent-child relationship and marital status, children conceived by assisted reproduction, and children born to gestational carrier.

SB 146 amends Section 45-2-501 NMSA 1978 to provide that an emancipated minor who is of sound mind may make a will, and amends Section 45-2-507 to provide that a will or any part of a will is revoked by executing another subsequent document in the manner provided for in Section 45-2-502 or 45-2-504 NMSA 1978, or both, that expressly revokes the previous will or part thereof. The bill amends Section 45-2-603 to add definitions of “descendant of a grandparent,” “descendants,” and “surviving,” and rules in antilapse provisions regarding the same, alternate devisees, and class gifts. The bill replaces the former provisions of Section 45-2-705 relating to class gifts construed to accord with intestate succession with a definitional section relating back to the new definitions set forth in new Sections 45-2-115 through -122 described above and their function in construing terms of relationship used within class gifts and rules for class-closing. The bill makes similar technical changes to Section 45-2-706 in rules relating to beneficiary designations in life insurance, retirement plans, P.O.D. accounts, transfer-on-death designations and deceased beneficiaries, as well as to Section 45-2-707 relating to trusts.

SB 146 enacts new sections of the UPC as follows:

- **Section 45-2-805:** provides that the court may reform the terms of a governing instrument to conform the terms to the transferor’s intention if it is proved by clear and convincing evidence that the transferor’s intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.
- **Section 45-2-806:** provides that the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor’s probable intention to achieve the transferor’s tax objectives. The court may provide that the modification has retroactive effect.
- **Section 45-2-908 through -914** to define several easement, option, and lease property rights (including future interests), statute of limitation rules related to the exercise thereof, exclusions and applicability of the rules depending on date of creation of the rights.

The bill amends Section 45-3-915 NMSA 1978, governing distribution to a person under disability, to raise the cap on the value of a property distribution to a spouse, parent or close relative with whom the person under disability resides from \$10,000 to \$50,000. The bill amends Section 45-3-1201 NMSA 1978, governing collection of personal property by affidavit, to raise the cap on the value of a property capable of being so collected from \$30,000 to \$50,000. The bill amends Section 45-3-1205 NMSA 1978, governing the transfer of title to a homestead to a surviving spouse by affidavit, to raise the cap on the value of a homestead from \$100,000 to \$500,000.

SB 146 makes technical changes in Sections 45-5-101 through -103, 45-5-208, 45-5-210, 45-5-313, and 45-5-417 to relate jurisdiction and definitions to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

SB 146 enacts new Section 45-3-435 providing circumstances under which a conservator may register a foreign protective order and Section 45-3-436 relating to the effect or registration of a guardianship or protective order from another state.

## **II. UPIA**

SB 146 amends Section 46-3A-409 NMSA 1978, governing deferred compensation, annuities and similar payments, and Section 46-3A-505 NMSA 1978, governing income taxes.

## **III. UDPIA**

SB 146 recompiles the Uniform Disclaimer of Property Interests Act as Section 45-2-1101 NMSA 1978 et. seq. and amends various provisions of the UDPIA.

## **IV. UAGPPJA**

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act was drafted by the National Conference of Commissioners on Uniform State Laws and approved and recommended for enactment in 2007. The commissioners summarize the Act as follows:

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues. The new UAGPPJA addresses many problems relating to multiple jurisdiction, transfer, and out of state recognition. It has been endorsed by the National Guardianship Foundation and the National College of Probate Judges. Endorsement by the American Bar Association is expected at the ABA's 2008 Mid-Year Meeting.

Due to increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAGPPJA will, when enacted, help effectively to address these problems.

See [http://www.nccusl.org/Update/uniformact\\_summaries/uniformacts-s-agppja.asp](http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-agppja.asp) for the full summary of the UAGPPJA provided by the commissioners.

The Act permits communication by a NM court with a court in another state concerning a proceeding arising pursuant to the Act. The UAGPPJA provides for cooperation between a NM court and a court of another state. The Act allows a court on its own motion to order that the testimony of a witness be taken in another state in a guardianship or protective proceeding. The UAGPPJA sets out factors for the court to consider in determining whether a respondent has a significant connection with a particular state. The Act specifies the circumstances providing a NM court with jurisdiction to appoint a

guardian or issue a protective order for a respondent, and the circumstances under which a NM court lacking jurisdiction has special jurisdiction. SB 146 also addresses exclusive and continuing jurisdiction, determination of an appropriate forum, when a NM court may decline jurisdiction or exercise limited jurisdiction or continue jurisdiction. The Act also addresses the rules that apply when a petition for the appointment of a guardian or issuance of a protective order is filled in NM and in another state and neither petition has been dismissed or withdrawn. The UAGPPJA also provides that a guardian or conservator appointed in NM may petition the court to transfer the guardianship or conservatorship to another state. The Act provides for the registration of a foreign judgment governing guardianship orders and protective orders in a NM court. The Act details the effects of such registration.

SB 146 provides in Section 45-5A-502 that subparts 1, 3 and 4 of the UAGPPJA and Section 45-5A-501 NMSA 1978 apply to proceedings begun before January 1, 2012, regardless of whether a guardianship or protective order has been issued. This section further provides that the UAGPPJA applies to guardianship and protective proceedings begun on or after January 1, 2012.

#### **V. UTC**

SB 146 amends provisions of the Uniform Trust Code to provide for the application and relevancy of amendments to the code.

SB 146 repeals and recombines various statutory sections.

The effective date of the Act is January 1, 2012.